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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/734,196	12/12/2000	John D. Kalvelage	MULTI 9	4254

7590

09/24/2002

MILLEN, WHITE, ZELANO & BRANIGAN, P.C.  
Arlington Courthouse Plaza I  
Suite 1400  
2200 Clarendon Boulevard  
Arlington, VA 22201

EXAMINER

FIDEI, DAVID

ART UNIT

PAPER NUMBER

3728

DATE MAILED: 09/24/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/734,196

Applicant(s)

KALVELAGE ET AL.

Examiner

David T. Fidei

Art Unit

3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1, 3, 6-14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Allers et al (Patent no. 5,860,549). A sealed blister assembly is disclosed comprising a plastic sheet formed with a recess 25 having an undercut 44. An equivalent lid 12 is attached to cover the opening of the recess. The lid includes a raised ridge 28 adapted to engage the undercut of the plastic sheet.

With respect to claim 3 the ridge 28, i.e., as shown in figure 2a, has walls on both sides leading to the top of arc that flare outwardly. Similarly, the undercut also has “sidewalls” on either side leading to the arc in the bottom of recess 44 to the extent recited in claim 4, see e.g., figure 2B.

As to claims 6-8, conventional materials are contemplated in column 3, lines 14-16 where the subject matter of these claims are believed to be contemplated.

With respect to claim 10 the undercut sidewalls are shorter than the ridge wall because the ridge walls fist within the undercut and extends beyond and out of the undercut, note figure 4.

In as much as claims 11 and 12 recite the blister assembly meet or exceed the requirements of a Class A or Class B container, it is not seen what is defined within this language that distinguishes the present subject matter based upon the recited comparison. Otherwise stated, in the form drafted, it would appear subject matter meeting claim 1 would also meet claims 11 and 12 since the examiner knows of no measurable parameter serving to provide a distinction based upon this language.

As to claim 13 a planar shoulder 42 is formed along the peripheral portion of the sheet used to form the recess 25. A perimeter is also formed around the recess. Also, since the recess of Allers et al is fully capable of receiving medication, this is merely a matter of intended use. A

reference that contains all the structure defined in a claim, but not the recited use anticipates the claim because a new use does not make an old product patentable, In re Schreiber, 128 F.3d 1473, 44 U.S.P.Q.2d 1429 (Fed. Cir. 1997).

As to claims 16 and 17 the length and width dimensions of the ridge 28 of Allers et al is considered larger than the corresponding dimensions of the undercut to the same extent as that shown in figure 2 of the present invention. Particularly in light of the undercut outside wall taper resulting in a lesser dimension than the outermost dimension of the ridge.

3. Claims 1, 3-14, 16 and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Edwards et al (Patent no. 5,339,973). As sealed blister is provided having a similar construction as Allers et al where a sealed blister assembly is disclosed comprising a plastic sheet formed with a recess having an undercut 40. An equivalent lid 12 is attached to cover the opening of the recess. The lid includes a raised ridge 38 adapted to engage the undercut of the plastic sheet. Figures 8 and 9 show other embodiments having similar constructions.

In as much as claims 11 and 12 recite the blister assembly meet or exceed the requirements of a Class A or Class B container, it is not seen what is defined within this language that distinguishes the present subject matter based upon the recited comparison. Otherwise stated, in the form drafted, it would appear subject matter meeting claim 1 would also meet claims 11 and 12 since the examiner knows of no measurable parameter serving to provide a distinction based upon this language.

As to claim 13 a planar shoulder 42 is formed along the peripheral portion of the sheet used to form the recess 25. A perimeter is also formed around the recess. Also, since the recess of Allers et al is fully capable of receiving medication, this is merely a matter of intended use. A reference that contains all the structure defined in a claim, but not the recited use anticipates the claim because a new use does not make an old product patentable, In re Schreiber, 128 F.3d 1473, 44 U.S.P.Q.2d 1429 (Fed. Cir. 1997).

As to claims 16 and 17 the length and width dimensions of the ridge 28 of Allers et al is considered larger than the corresponding dimensions of the undercut to the same extent as that

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shown in figure 2 of the present invention. Particularly in light of the undercut outside wall taper resulting in a lesser dimension than the outermost dimension of the ridge.

***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allers et al as applied to claims 1 and 3 above, and further in view of Edwards et al (Patent no. 5,339,973). The difference between Allers et al and the subject matter of these claims resides in the undercut having sidewalls that are in frictional engagement with the outside edge of the ridge wall. Edwards is cited for the motivational teaching of figures 6-8 and column 3, lines 5-11.

To the extent that Allers et al fails to teach an undercut having sidewalls that are in frictional engagement with the outside edge of the ridge wall, the prior art fairly teaches such a modification in order to provide a tight seal between the tray and lid. Accordingly, modifying Allers et al by constructing sidewalls in frictional engagement with the outside edge of the ridge walls would not have involved an inventive step.

6. Claims 6-8, 11 and 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Allers et al (Patent no. 5,860,549). To the extent that the blister package is not of the class claimed or made of polyethylene, it would have been obvious to one having ordinary skill in the art at the time the invention was made to employ polyethylene of Class A or Class B, since it has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. In re Leshin, 125 USPQ 416.

7. Claims 2 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al (Patent no. 6,039,495) in view of Allers et al (Patent no. 5,860,549). Zimmerman discloses a sheet having a plurality of recesses with individual lids sealing the same. The difference between the claimed combination resides in the undercut formed in the perimeter all around the recess. Allers discloses such sealing arrangement in figures 2A. It would have been obvious to one of ordinary skill in the art to modify the sealing arrangement of Zimmerman by constructing an undercut engaging a raised ridge as taught by Allers et al, in order to form a seal in the opening that provides a tighter engagement around the entire periphery.

8. Claims 2 and 15 rejected under 35 U.S.C. 103(a) as being unpatentable over Zimmerman et al (Patent no. 6,039,495) in view of Edwards et al (Patent no. 5,339,973). Zimmerman discloses a sheet having a plurality of recesses with individual lids sealing the same. The difference between the claimed combination resides in the undercut formed in the perimeter all around the recess. Edwards discloses such sealing arrangement in figures 6-9. It would have been obvious to one of ordinary skill in the art to modify the sealing arrangement of Zimmerman by constructing an undercut engaging a raised ridge as taught by Edwards, in order to form a seal in the opening that provides a tighter engagement around the entire periphery.

***Response to Arguments***

9. Applicant's arguments filed September 9, 2002 have been fully considered but they are not persuasive. It is believed all of the issues addressed in the Interview of August 9, 2002 have been thoroughly considered in the above rejections.

One of the differences between the present invention and Allers et al discussed at said Interview resides in the undercut having sidewalls that are in frictional engagement with the outside edge of the ridge wall. While it is not entirely agreed Allers fails to provide such an arrangement even though the drawings do not clearly show this arrangement, Edwards is cited for the disclosure of figures 6-8 and column 3, lines 5-11. Hopefully, putting the issue to rest.

As to claim 10, applicant apparently fails to understand the examiner's interpretation of this language. Since claims 16 and 17 were previously grouped with this claim, the elimination thereof may clarify the issues. Since the ridge wall extends outwardly and around the undercut, it manifestly stands to reason that "the undercut sidewalls are shorter than the ridge wall", claim 10. It is believed this feature is better viewed through figure 5. If one considers the ridge wall to be the height from the base flange 64 to the top of the arc of ridge 28 and the undercut side wall to be the *inside* distance from the *inside* curve of recess 44 to flange 66, the undercut side wall is by definition shorter so that flange 64 clears flange 66.

With respect to claims 16 and 17, applicant asserts the comments do not address the dimensions of the ridge. Aside from the prior indefiniteness, it is not seen what is embodied in the language of claims 16 and 17 that distinguishes over Allers et al. As pointed out by applicant page 5 of the present specification in conjunction with figure 2, the length and width of ridge 22 is described as slightly larger than the corresponding dimension undercut. Presumably, as a result of the taper construction. The same arrangement exists in Allers et al, and Edwards for that matter, where deformation and "snap" fitting occurs. Accordingly, it is not seen what there is to explain.

#### **Conclusion**

10. Telephone inquiries regarding the status of applications or other general questions, by persons entitled to the information, "should be directed to the group clerical personnel and not to the examiners. In as much as the official records and applications are located in the clerical section of the examining groups, the clerical personnel can readily provide status information without contacting the examiners", M.P.E.P. 203.08. The Group clerical receptionist number is (703) 308-1148.

If in receiving this Office Action it is apparent to applicant that certain documents are missing, e.g., copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers or other general questions should be directed to Tech Center 3700 Customer Service at (703) 306-5648, email [CustomerService3700@uspto.gov](mailto:CustomerService3700@uspto.gov).

Any inquiry concerning the MERITS of this examination from the examiner should be directed to David T. Fidei whose telephone number is (703) 308-1220. The examiner can normally be reached on Monday - Friday 6:30 am - 4:00 pm.

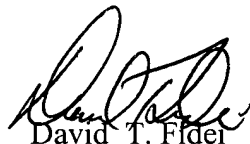
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached at (703) 308-2672. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9303 for After Final communications.

Other helpful telephone numbers are listed for applicant's benefit.

Allowed Files & Publication	(703) 305-8497
Assignment Branch	(703) 308-9723
Certificates of Correction	(703) 305-8309
Drawing Corrections/Draftsman	(703) 305-8404/8335
Fee Increase Questions	(703) 305-5125
Intellectual Property Questions	(703) 305-8217
Petitions/Special Programs	(703) 305-9282
Terminal Disclaimers	(703) 305-8408

If the information desired is not provided above, or has been changed, please do not call the examiner (this is the latest information provided to him) but the general information help line below.

Information Help line	1-800-786-9199
Internet PTO-Home Page	<a href="http://www.uspto.gov/">http://www.uspto.gov/</a>

  
David T. Fidei  
Primary Examiner  
Art Unit 3728

dtf  
September 19, 2002